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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,707	03/09/2001	Michael Stefan Cox	Q63167	5115
7590 11/30/2004 SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC 2100 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20037-3213			EXAMINER LEZAK, ARRIENNE M	
			ART UNIT 2143	PAPER NUMBER

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/801,707

Applicant(s)

COX ET AL.

Examiner

Arrienne M. Lezak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 & 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of US Patent US 6,542,964 B1 to Scharber in view of US Patent US 6,788,692 B1 to Boudreau.
5. Regarding Claim 1, Scharber discloses a method of allocating traffic to a path or paths between a sending node and a receiving node in a network, wherein each message includes a QoS flag, (Fig. 4), the method including:

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- at the sending node, compiling a traffic status map of the available capacity on the or each practical path between the sending node and the receiving node, (Fig. 4 & Col. 10, lines 21-61);
- allocating messages to paths on the basis of its QoS flag, and the available capacity of the paths, (Col. 5, lines 53-67; Col. 6, lines 1-32; Cols. 11-14 – particularly Claims 3, 19, 20, 42 & 43).

6. Examiner notes that Scharber discloses an optimization, which optimization affects the selection of a cache query protocols and retrieval methods as influenced by a number of factors, including quality of service, (QoS). Scharber does not specifically indicate that said optimization utilizes QoS flags. Boudreau discloses method for network load balancing, which method teaches the use of QoS flags, (Boudreau - Fig. 3 & Col. 5, lines 31-54). The use of QoS flags within an optimization considering a QoS factor and maintaining a QoS database, (Col. 10, lines 33-52), would have been obvious to one of ordinary skill in the art at the time of invention by Applicant, as an optimization influenced by QoS factors obviously requires means by which to identify, consider and apply the same. QoS flags are well-known in the art as a means by which to identify, consider and apply QoS, and as such, the QoS flags would obviously be used within the Scharber system.

7. Finally, Examiner notes that path allocation within Scharber is optimized, (Col. 9, lines 65-67 & Col. 10, lines 1-52) via content type and transport protocol, wherein it would have been obvious to allocate the highest priority messages to the shorter paths and lower priority messages to the longer paths, per QoS, (and other), requirements.

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Scharber further specifically enumerates an example for delivery of content using the fastest available path to avoid unnecessary delays in responding to requests, (Col. 9, lines 65-67 & Col. 10, line 1). Thus, Claim 1 is found to be unpatentable over the combined teachings of Scharber in view of Boudreau.

8. Regarding Claim 2, Scharber discloses a method of allocating traffic to a path or paths between a sending node and a receiving node in a network wherein the QoS hierarchy allocates the highest priority messages to the shorter paths with available capacity in preference to lower priority messages, the lower priority messages being allocated to longer paths as traffic conditions require, (Col. 9, lines 58-67 & Col. 10, lines 1-18). Thus, Claim 2 is found to be unpatentable over the combined teachings of Scharber in view of Boudreau.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak  
Examiner  
Art Unit 2143

AML

William C. Vaughn Jr.  
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